



U.S. Department of Justice

Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



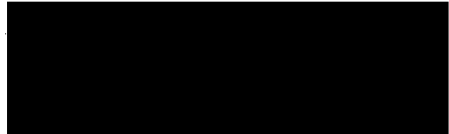
Public Copy

FILE: [REDACTED]
EAC 98 006 51937

Office: Vermont Service Center

Date: AUG 10 2000

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner states that she has three children, one was born in the United States, and if she were deported, no one would take care of her children. She further states that she has been living in the United States for 16 years, she has been paying her taxes, and she has no criminal record, and that deportation will destroy her life and her family's future. The petitioner claims that her husband was deported from the United States because of his criminal record. She submits copies of documents previously furnished.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject

of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married her spouse on April 21, 1979 in Ixtapan de la Sal, Mexico. The petition, Form I-360, shows that the petitioner arrived in the United States on December 31, 1981. However, her current immigration status or how she entered the United States was not shown. On October 3, 1997, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

Pursuant to section 204(a)(1)(B)(ii) of the Act, the self-petitioner must be the spouse of a lawful permanent resident of the United States. Further, 8 C.F.R. 204.2(c)(1)(i)(A) and 8 C.F.R. 204.2(c)(1)(iii) require that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The director determined that the petitioner failed to submit evidence to establish that her spouse is a lawful permanent resident of the United States as had been requested on October 17, 1997. He noted, however, that the Service record reflects that the petitioner's spouse was deported (removed) from the United States on September 6, 1997, at which time he lost his permanent resident status. On appeal, the petitioner claims that her husband was deported from the United States because of his criminal record.

The petitioner's spouse was removed from the United States on September 6, 1997. He was no longer a lawful permanent resident of the United States when the petitioner filed the self-petition on October 3, 1997. The petitioner, therefore, is statutorily ineligible for the benefit sought under the provisions of section 204(a)(1)(B)(ii) of the Act.

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of

extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished no evidence to establish that her removal to Mexico would be an extreme hardship to herself or to her children, the petitioner was requested on October 17, 1997 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. No additional evidence was furnished.

While the petitioner on appeal claims that removal would destroy her life and her family's future, no documentary evidence is furnished to establish that her removal from the United States would result in extreme hardship to herself or to her children. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.